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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM KEITH HAYWARD, JR., et al.,

Defendants and Appellants.

C068416

(Super. Ct. No.
10F08106)

On November 28, 2010, defendant William Keith Hayward, Jr., got out of a car, approached a couple walking their dog, pointed a gun at them, and demanded their dog. The couple handed over their dog and Hayward got back into the car that his girlfriend, codefendant Tamarra Ann Chace, was driving, and left the scene. A couple of weeks later, Hayward was arrested outside his apartment. Chace and the stolen dog were inside the apartment.

In a "package" agreement, Hayward pled no contest to robbery and personal use of a firearm and was sentenced to five years in state prison. Chace pled no contest to being an

accessory after the fact to robbery, and was placed on probation with one year in county jail and a recommendation for sheriff's work project.

Hayward and Chace appeal. Hayward contends the trial court erred in denying his motion to withdraw his plea. Counsel for Chace filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We address the issue raised by Hayward, in addition to undertaking a review of the record as to Chace as required by *Wende*. We affirm both judgments.

PROCEDURAL BACKGROUND

On December 30, 2010, Hayward and Chace were charged with two counts of robbery and one count of receiving stolen property. It was also alleged Hayward personally used a firearm in the commission of the robberies and Chace was armed with a firearm as a principal to the robberies. Accordingly, Hayward's maximum prison exposure exceeded 15 years and Chace's exceeded five years.

On January 20, 2011, both defendants entered into a plea agreement wherein Hayward agreed to plead no contest to robbery and admit personal use of a firearm with stipulated low terms on both for a total of five years in state prison.¹ Chace agreed to plead no contest to being an accessory after the fact, with the agreement that she would receive probation with one year in

¹ Penal Code section 12022.5 provides for an additional three-, four-, or 10-year consecutive sentence. All further statutory references are to the Penal Code unless otherwise indicated.

county jail. Should she violate probation, her maximum prison exposure would be three years. (§ 32.) The trial court questioned Hayward and Chace whether: 1) they understood their rights; 2) had been provided enough time to discuss the matter with their attorneys; 3) had not been promised anything other than what was stated in the record; 4) had not been threatened into entering their plea; and 5) that they were each entering their plea "freely and voluntarily after fully discussing [the] case" with their respective attorneys.

On May 4, 2011, prior to sentencing and after retaining new counsel, Hayward filed a motion to withdraw his plea. Attached to the motion, defendant declared the following:

"[A]t my first jail visit with my then attorney, Jeffrey Raven, he informed me that the offer from the District Attorney to settle my case was for both myself and my co-defendant [Chace] to both accept a negotiated settlement of three years in State Prison. This negotiated settlement would result in me having to enter a plea to take two strikes.

"[D]uring the first visit, I asked Mr. Raven if it was possible to get a year in County Jail in the alternative. He said that was out-of-the-question but he could inquire about me getting five years in State Prison and my co-defendant [Chace] getting only a year in county jail.

"[I] was informed that if I did not enter a plea to the five-years in state prison my wife [Chace] would not receive a promise of no state prison for her deal.

"[I] was further informed that my wife [Chace] would certainly be eligible for a Sheriff's Alternative sentencing program.

"[M]r. Raven told me that my case wasn't a good candidate for trial and that if convicted at trial I could get anywhere from 13 to 17 years.

"[I] very much wanted to speak with my co-defendant, who is now my wife and the mother of my child [Chace],² about what was best for our family but due to my being in-custody never had an opportunity to do so.

"[I] was very fearful about what would happen to our children if my wife and I both went to prison for an extended period of time. I felt as though I had to plea to protect them."

In opposition to the motion, the People presented evidence that, contrary to Hayward's assertion, Chace had, in fact, visited Hayward in the county jail two days prior to Hayward's entry of his plea. The People also noted that Hayward and Chace were each represented by their own counsel and that nowhere did Hayward allege that he was pressured in any way, by Chace or otherwise, to enter into the plea.

² According to the probation officer's report, Hayward reportedly married Chace while he was in custody on this matter. He is not the biological father of Chace's two-year-old daughter but has been the child's "father figure" since she was seven months old.

The trial court denied Hayward's motion. The court noted that it had not directly inquired about what factor, if any, leniency for Chace had played in Hayward's decision to accept the package plea deal, but that this was not a case where Hayward had not acted freely and voluntarily and in his best interests. Instead, this was a situation where Hayward's attorney had indicated that Hayward was looking at 13 to 17 years in prison and had been given an offer for considerably less time.

Hayward obtained a certificate of probable cause.
(\$ 1237.5.)

DISCUSSION

I

Hayward's Appeal

Hayward claims the trial court did not adequately inquire into the circumstances of the package deal plea agreement and, therefore, should have granted his subsequent request to withdraw his plea after it became aware of the relevant facts. In substance, Hayward argues that the trial court abused its discretion in denying his motion to withdraw his plea because the package deal plea agreement was unduly coercive as to him and, thus, his plea was not entered freely and voluntarily. We disagree.

Package deal plea agreements are ones in which "the prosecutor offers a defendant the opportunity to plead guilty to a lesser charge, and receive a lesser sentence, contingent upon a guilty plea by *all* codefendants." (*In re Ibarra* (1983))

34 Cal.3d 277, 286 (*Ibarra*).) They are not inherently coercive but the California Supreme Court, recognizing the *potential* for coerciveness in such package deals, set forth general guidelines for the trial court in evaluating the voluntariness of a package deal plea. (*Ibarra*, at pp. 286-287.)

Ibarra requires the trial court considering a package deal plea to inquire into whether the inducement for the plea is proper, whether the prosecutor misrepresented facts to the defendant, whether "the substance of the inducement is within the proper scope of the prosecutor's business," whether the prosecutor has "a reasonable and good faith case against the third parties to whom leniency is promised," whether a factual basis supports the plea, whether "the 'bargained-for' sentence" is disproportionate to the defendant's culpability, whether psychological pressures indicate an involuntary plea, whether a promise of leniency to a third party like "a close friend or family member whom the defendant feels compelled to help" was a significant consideration, and whether the likelihood of conviction at trial offsets any coercive aspects of the plea. (*Ibarra, supra*, 34 Cal.3d at pp. 288-290.) This list is not exhaustive and other factors affecting the voluntariness of the plea, such as the age of the defendant, which party had initiated the plea negotiations, and whether charges had already been pressed against a third party, can also be important considerations. (*Id.* at p. 290.)

Here, Hayward has never alleged that the inducement for the plea was improper or that the prosecutor misrepresented any

facts. He did not allege that the prosecutor's case against himself or Chace (who had already been charged) was not factually based or brought in good faith. He did not allege that the package deal's five-year term was disproportionate to his culpability. His only allegation of coercion arises from his relationship with Chace. He claimed that he was concerned about what would happen to "our children" if he and Chace both went to prison for an extended period of time, wanted to do what was best for his family and, accordingly, entered the plea to protect them and assure that Chace would not be sent to prison at the outset.

The trial court considered the nature and extent of this alleged coercion and concluded that Hayward's concern for Chace was not the overriding motivating factor in Hayward's acceptance of the plea. First, the trial court (as the entity which makes credibility determinations) was not obliged to accept Hayward's self-serving statements, especially in light of his refuted claim that he had not been able to discuss the plea agreement with Chace due to his incarceration. Moreover, as the trial court emphasized, Hayward's attorney had told him that he would likely be convicted and sent to prison for 13 to 17 years if he went to trial. Additionally, it cannot be overlooked that Hayward was 18 years old and, absent the package deal plea which he accepted, he was looking at putting two strikes on his criminal record. Thus, the trial court rationally concluded that the overriding motivating factor for Hayward's guilty plea was the realization of the likelihood of conviction at trial.

Hayward's concerns about his children having both their parents incarcerated for an extended period of time may have motivated him to have his attorney pursue the modification of the package deal plea (from three years each to five years for Hayward and no state prison for Chace). But the circumstances here do not compel a finding that Hayward's plea was coerced and that, absent the package deal plea which provided leniency for Chace, he would have proceeded to trial. The totality of the circumstances supports the trial court's conclusion that Hayward made a rational and voluntary choice, based on his own interests, not those of Chace, when he accepted the plea agreement.

II

Chace's Appeal

We appointed counsel to represent Chace on appeal. Counsel filed a *Wende* brief that sets forth the facts of the case and requests that this court review the record and determine whether there are any arguable issues on appeal. Chace was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from Chace. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to Chace.

DISPOSITION

The judgments are affirmed.

ROBIE, Acting P. J.

We concur:

BUTZ, J.

HOCH, J.